

ORIGINAL

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

MAR 30 3 36 PM '93

DISPATCHED BY MM Docket No. 93-68

In the Matter of

Amendment of Section 73.202(b), RM-8130
Table of Allotments,
FM Broadcast Stations.
(Paradise Valley, Arizona)

NOTICE OF PROPOSED RULE MAKING

Adopted: March 8, 1993; Released: March 30, 1993

Comment Date: May 20, 1993

Reply Comment Date: June 4, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the petition for rule making filed on behalf of Scottsdale Talking Machine & Wireless Company, Inc. ("petitioner"), permittee of Station KXLL(FM), Channel 290A, Paradise Valley, Arizona,¹ seeking the substitution of Channel 290C3 for Channel 290A and modification of its authorization accordingly to specify operation on the higher powered channel. Petitioner failed to state its intention to apply for Channel 290C3 if allotted to Paradise Valley, and is requested to do so in its comments.

2. We believe the public interest would be served by proposing the substitution of Channel 290C3 for Channel 290A at Paradise Valley since it could provide an enhanced service to the community. Channel 290C3 can be allotted to Paradise Valley at the petitioner's currently authorized site,² consistent with the minimum distance separation requirements of Section 73.207(b)(1) and (3) of the Commission's Rules.^{3 4} However, since Paradise Valley is located within 320 kilometers (199 miles) of the Mexican border, the Commission must obtain concurrence of the Mexican government in the proposal.

¹ Petitioner advises that the grant of its construction permit application (File No. BPH-870909MF), 6 FCC Rcd 1668 (I.D. 1991), *aff'd*, 6 FCC Rcd 4185 (Rev. Bd. 1991), *aff'd*, 7 FCC Rcd 4422 (1991), has been appealed to the D.C. Circuit, *Hope Valley FM Limited Partnership v. F.C.C.*, Case No. 92-1355.

² Coordinates at the site specified in the construction permit issued for Station KXLL(FM) at Paradise Valley are 33-32-30 and 111-57-12. Consideration of this proposal, and termination of this proceeding, is conditioned upon the adoption of a working arrangement between the United States and Mexican governments to implement the 1992 U.S./Mexico FM Broadcast Agreement.

³ The proposal for Channel 290C3 is short-spaced to Station KONC-FM, Channel 292A, Sun City, Arizona, at coordinates 33-36-05 and 112-17-31, and therefore dependent upon Station KONC-FM moving to Channel 292C2 in accordance with the

3. The petitioner's modification request at Paradise Valley conforms with the provisions of Section 1.420 of the Commission's Rules. Therefore, we shall propose to modify the petitioner's Class A authorization for Station KXLL(FM) without entertaining competing expressions of interest in the use of Channel 290C3 at Paradise Valley, or requiring the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

4. In view of the above, the Commission believes it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Paradise Valley, Arizona, as follows:

| City | Channel No. | |
|-----------------------------|-------------|----------|
| | Present | Proposed |
| Paradise Valley, Arizona | 290A | 290C3 |

5. IT IS ORDERED, That the Secretary shall send a copy of this *Notice* to the licensee of Station KONC-FM and to Hope Valley FM Limited Partnership, as follows: Resource Media, Inc., Radio Station KONC-FM, 7401 W. Camelback Road, Phoenix, Arizona 85033; Hope Valley FM Limited Partnership, 9121 North Kober Road, Paradise Valley, Arizona 85253.

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **May 20, 1993**, and reply comments on or before **June 4, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

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modification provisions set forth in the *Report and Order* in MM Docket No. 92-66. See 8 FCC Rcd 796 (1993). Therefore, since the Paradise Valley allotment proposal is dependent upon the grant of a license to Station KONC-FM on Channel 292C2, the issuance of a license to petitioner for Channel 290C3 at Paradise Valley may be withheld until Station KONC-FM is authorized to operate on its new channel. The licensee of Station KONC-FM will be served with a copy of this *Order*.

⁴ As indicated at note 1, *supra*, there is currently pending before the Court of Appeals a request by Hope Valley FM Limited Partnership ("Hope Valley") to review the Commission's decision affirming the denial of its comparative application at Paradise Valley (File No. BPH-870910ME). As a result, the petitioner's instant modification request is conditioned on the outcome of the appeal. We will serve a copy of this *Notice* on Hope Valley.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.